

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
VESTEL MANASCO,)
)
Appellant,)
)
v.)
)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
)
Respondent.)

PCHB No. 850

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This is an appeal of a \$50 civil penalty assessed against appellant, Vestel Manasco, for allegedly violating Section 4.01 of Regulation I of the respondent, Southwest Air Pollution Control Authority (SWAPCA). The matter came on for hearing before the Pollution Control Hearings Board (William A. Harrison, Hearing Examiner, presiding alone), convened in Centralia on October 27, 1975. Respondent elected a formal hearing.

Appellant, Vestel Manasco, appeared pro se; respondent appeared by and through its attorney, James D. Ladley.

Witnesses were sworn and testified. Exhibits were admitted. Having

1 read the transcript and considered the exhibits and the respondent's
2 exceptions to the Proposed Decision of the Presiding Officer, the Board
3 makes and enters these

4 FINDINGS OF FACT

5 I

6 The appellant, Mr. Manasco, and the City of Kelso, Washington, owned
7 adjacent lands within the boundaries of Kelso, Washington, upon which
8 there was a dense thicket of blackberry bushes and in which appellant could
9 not reasonably be expected to have known there was a rubber tire. Such
10 lands were immediately adjacent and in close proximity to a human dwelling

11 The above blackberry thicket was almost entirely dead, brown and
12 shriveled due to a prior application of chemicals. Mr. Manasco and the
13 City of Kelso both became interested in burning this standing, but
14 dead, vegetation because it created a condition which was both unsightly
15 and constituted a potential fire hazard.

16 III.

17 A few days prior to April 25, 1975, Mr. Manasco applied to the
18 Kelso Fire Department for a permit enabling him to burn the blackberry
19 thickets located on his land. The Kelso Fire Department found such a
20 fire would be in compliance with their own regulations. The fire
21 department further found that such a fire would be in compliance with a
22 document entitled "Open Outdoor Fire Policy" published by SWAPCA then
23 filed with the fire department. For these reasons a written permit
24 purporting to convey the approval of both the Kelso Fire Department and
25 SWAPCA was conferred upon Mr. Manasco.

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1 IV.

2 On April 25, 1975, Mr. Manasco, Mr. Crimmel (Assistant Chief of
3 the Kelso Fire Department), and two fully-manned fire engines of the
4 Kelso Fire Department assembled at the adjacent properties of Mr. Manasco
5 and the City. Mr. Manasco set fire to the blackberry thicket on his land
6 and on the land belonging to the City. Within the thicket there was at
7 least one bottle, one can and one tire. These were burned but appellant
8 immediately retrieved from and extinguished the fire upon the burning
9 tire as soon as he learned it was within the thicket. Units from the
10 Kelso Fire Department supervised the burning in order to insure its
11 complete safety.

12 VI.

13 At approximately 1:15 p.m. an Air Quality Control Specialist of
14 SWAPCA happened upon the scene and observed the burning. The SWAPCA
15 Specialist issued a field Notice of Violation No. CS 1260 to the City
16 of Kelso and No. 1415 to Mr. Manasco. Mr. Manasco was cited for
17 "Permitting and maintaining an open fire in violation of Section 4.01,
18 of Regulation I, of the Southwest Air Pollution Control Authority,"
19 A \$50 civil penalty was assessed pursuant to Section 2.10. At hearing
20 the violations were more specifically identified as 1) failure to
21 obtain a SWAPCA permit in advance (Section 4.01(b)), and 2) burning a
22 fire which contained prohibited materials (Section 4.01(b)(2)(v)).

23 VI.

24 Any Conclusion of Law hereinafter recited which should be deemed
25 a Finding of Fact is hereby adopted as such.

26
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CONCLUSIONS OF LAW

I.

By burning a prohibited material appellant technically violated respondent's Regulation I, Article IV, Section 4.01(b)(2)(v). Appellant, by virtue of RCW 70.94.750(1) was not required to procure a permit from respondent to burn the blackberry bushes.

II.

The Pollution Control Hearings Board has established a policy (see PCHB Nos. 868 and 869, Lloyd's of Washington, Inc. v. PSAPCA) that the good faith efforts of private citizens to comply with regulatory provisions cannot be ignored by the regulatory agency involved and such effort will be considered by this Board. Such good faith efforts were present in this case and involved conflicting interpretations of burning laws by two different governmental agencies. Having considered the circumstances of this matter, the penalty should be suspended upon the condition that appellant incurs no further violations of respondent's regulations for a period of one year.

III.

Respondent contends in its exceptions to the Proposed Decision, that since there was a violation of its rule, RCW 70.94.431 is mandatory and non-discretionary, i.e., a penalty must be imposed. We answer as follows:

1. The penalty is only suspended and not vacated.

2. The word "shall" may have either a mandatory or permissive meaning in a statute. The above cited statute is discretionary and falls squarely within the reasoning of Walters v. Hampton,

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1 14 Wn. App. 548 (1975).

2 IV.

3 Any Finding of Fact which should be deemed a Conclusion of Law
4 is hereby adopted as such.

5 ORDER

6 The appeal is denied but the penalty imposed is suspended for one
7 year upon the condition that appellant incurs no further violation of
8 respondent's regulations.

9 DATED this 29th day of January, 1976.

10 POLLUTION CONTROL HEARINGS BOARD

11 Chris Smith
12 CHRIS SMITH, Member

13 W. A. Gissberg
14 W. A. GISSBERG, Member

15 Walt Woodward
16 WALT WOODWARD, Member

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27 FINAL FINDINGS OF FACT,
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CERTIFICATION OF MAILING

I, Dolories Osland, certify that I deposited in the United States mail, copies of the foregoing document on the 30th day of January, 1976, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. James D. Ladley
Attorney at Law
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Vancouver, Washington 98660

Mr. Vestel Manasco
1003 South 13th
Kelso, Washington 98626

Southwest Air Pollution
Control Authority
7601-H N. E. Hazel Dell Avenue
Vancouver, Washington 98665

Dolories Osland

DOLORIES OSLAND, Clerk of the
POLLUTION CONTROL HEARINGS BOARD

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